

STATE OF MICHIGAN
COURT OF APPEALS

MARTIN SPROCKET & GEAR, INC.,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee,

and

DEPARTMENT OF TREASURY/REVENUE
DIVISION,

Defendant.

UNPUBLISHED

October 21, 2014

No. 317760

Court of Claims

LC No. 13-000031-MT

Before: SAAD, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Appellant appeals as of right from the final order of the Court of Claims granting appellee's motion for summary disposition pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction). We affirm.

In 2013, appellant, a Texas corporation, filed a complaint in the Court of Claims alleging that its tax return for the tax year ending June 30, 2008, reflected an overpayment of \$37,116, and its tax return for the tax year ending June 30, 2009, reflected an overpayment of \$46,080. Appellant attributed the overpayments to apportioning its business income to Michigan on the basis of a sales-factor apportionment formula, whereas it was entitled to elect to use a three-factor apportionment formula. Appellant alleged that on December 21, 2012, its claim for a refund was denied because, it was informed, it was obligated to use the sales-factor apportionment formula.

Appellee moved for summary disposition pursuant to MCR 2.116(C)(4), arguing that the Court of Claims lacked jurisdiction because appellant had failed to pay all taxes, penalties, and

interest as required by MCL 205.22(2).¹ Appellee also argued that the Court of Claims lacked jurisdiction because appellant failed to comply with MCL 205.22(1), which provides that a final assessment must be appealed to the Court of Claims within 90 days. The Court of Claims ruled that it did not have jurisdiction over the case because appellant failed to appeal the final assessments in accordance with MCL 205.22.² Appellant's motion for reconsideration was denied.

We review de novo whether a tribunal lacks jurisdiction over a case. *Toaz v Dep't of Treasury*, 280 Mich App 457, 459; 760 NW2d 325 (2008). It is undisputed that plaintiff failed to timely appeal either final assessment as required by MCL 205.22(1), and as a result the final assessments are "final and [are] not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack." MCL 205.22(4). Accordingly, the final assessments finally and conclusively established plaintiff's tax liability under the Business Tax Act (BTA), MCL 208.1101 *et seq.*, for the tax years ending in June 2008 and June 2009.

Plaintiff's claim for a refund, if successful, would set aside the final assessments by reducing its BTA tax liability as previously established by the final assessments. This constitutes a collateral attack prohibited by MCL 205.22(4). See *Workers' Compensation Agency Dir v MacDonald's Indus Prod, Inc*, 305 Mich App 460, 474; ___NW2d___ (2014) (defining collateral attack). Summary disposition was therefore warranted under MCR 2.116(C)(4) because the trial court did not have jurisdiction to consider plaintiff's collateral attack to its BTA tax liability for the tax years ending in June 2008 and June 2009.

Although not needed, there is at least one additional reason supporting the trial court's dismissal. Under MCL 205.30, "a taxpayer must first pay the tax at issue" to seek a tax refund. *Ford Motor Co v Dep't of Treasury*, 496 Mich 382, 391; ___NW2d___ (2014). Here, "the tax at issue" in plaintiff's claim for refund was the tax imposed by the BTA. See *Id.* at 386-389 (when

¹ In the supporting brief, appellee explained that on October 17, 2011, it issued a final assessment to appellant for the tax year ending June 2008, assessing \$26,494.86 in tax, penalty, and interest (final assessment TG43862), and that on January 10, 2011, it issued a final assessment for the tax year ending June 2009, assessing \$64,704.92 in tax, penalty, and interest (final assessment S404299). Appellee asserted that appellant paid \$18,961 toward final assessment S404299, but had not made any payments toward final assessment TG43862. As a result, appellee asserted, appellant continued to owe \$47,552.38 in tax, \$1,245 in penalty, and statutory interest with respect to S404299; and \$15,134 in tax, \$3,783.50 in penalty, and statutory interest with respect to TG43862. In its brief in response, appellant explained that the \$83,196 requested refund was overstated by about \$36,000 due to a clerical oversight in reviewing its accounting records. Appellant stated that its counsel conferred with appellee's counsel for an opportunity to amend the complaint to request a refund of about \$47,000, but the request was denied.

² The trial court did not specify if it lacked jurisdiction because plaintiff failed to pay the final assessments as required by MCL 205.22(2), or if it lacked jurisdiction because plaintiff failed to timely challenge the final assessments as required by MCL 205.22(1).

the taxpayer sought a refund for allegedly overpaid taxes, “the tax at issue” was the tax imposed by the Single Business Tax Act, MCL 208.1 *et seq.*). Plaintiff did not dispute the affidavit of defendant’s administrator indicating that plaintiff had not yet paid either final assessment when it filed its complaint in the Court of Claims. Because plaintiff failed to pay the tax at issue, it was not entitled to seek a refund under MCL 205.30.

Affirmed.

/s/ Henry William Saad
/s/ Peter D. O’Connell
/s/ Christopher M. Murray